



Reprinted
February 26, 2002

ENGROSSED SENATE BILL No. 29

DIGEST OF SB 29 (Updated February 25, 2002 12:55 PM - DI 103)

Citations Affected: IC 4-4; IC 4-23; IC 8-1; noncode.

Synopsis: Clean coal and energy projects and research. Encourages: (1) new energy generating facilities in Indiana that use clean coal technology and are fueled using Illinois Basin coal resources; (2) advanced technologies that reduce regulated air emissions from existing generating plants; (3) projects to develop alternative energy sources, including renewable energy projects; and (4) the purchase by energy utilities of fuels produced by coal gasification facilities in Indiana. Provides that the utility regulatory commission (IURC) has jurisdiction over a utility's purchase of clean coal technology from third parties, including the purchase of precombustion coal treated by gasification. Directs the IURC to encourage clean coal and energy projects through financial incentives. Requires that in order to qualify
(Continued next page)

Effective: Upon passage; July 1, 2002.

**Weatherwax, Lanane, Server,
Waterman, Blade, Hume, Gard**

(HOUSE SPONSORS — STILWELL, LUTZ J, BECKER)

November 20, 2001, read first time and referred to Committee on Rules and Legislative Procedure.

January 17, 2002, amended; reassigned to Committee on Energy and Economic Development.

January 29, 2002, amended, reported favorably — Do Pass.

February 4, 2002, read second time, amended, ordered engrossed.

February 5, 2002, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 11, 2002, read first time and referred to Committee on Rules and Legislative Procedures.

February 21, 2002, amended, reported — Do Pass.

February 25, 2002, read second time, amended, ordered engrossed.

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for certain incentives, projects to reduce regulated air emissions at existing energy generating plants must be located at plants that are primarily fueled by Illinois Basin coal. Provides that the IURC shall encourage and provide incentives for certain clean coal and energy projects only if the projects are in the public interest, convenience, and necessity. Directs the state utility forecasting group to conduct an annual study on the use, availability, and economics of using renewable energy resources in Indiana and to submit a report of its findings to the IURC. Provides that if any provisions concerning clean coal and energy projects are found to be unlawful, the IURC must annually review any approved projects. Creates a center for coal technology research to develop technologies to advance the use of Indiana coal. Requires the department of commerce to pursue available private and public sources of money for the coal research grant fund. Repeals current provision granting the IURC enforcement powers over utilities and replaces it with provision authorizing the IURC to impose civil penalties of up to \$5,000 or \$15,000 on public utilities other than telephone companies that provide local service for violations of or noncompliance with utility statutes, rules, and orders. Requires the civil penalties to be: (1) deposited in the commission public utility fund account; (2) refunded directly to customers; or (3) awarded to another utility harmed by the violation or noncompliance. Permits the attorney general to recover attorney fees in successful actions. Authorizes the IURC to order a utility to provide service in emergency situations. Authorizes the IURC to require a public utility to post a reasonable performance bond before operating. Provides that the IURC has jurisdiction over purchases of: (1) mergers of public utilities, utility companies, and holding companies of public utilities and utility companies; and (2) certain merchant power plants. Requires the IURC to issue an order not later than 135 days after a petition for approval of a merger is filed. Provides notice and hearing procedures for siting of a merchant power plant. Establishes the criteria the IURC must consider when considering a merchant power plant application, including preferred siting locations. Provides that when considering whether to approve a plant, the IURC must obtain a recommendation from the department of natural resources (the "department") regarding the plant's planned use of and potential effect on a water resource. Requires a merchant power plant that seeks: (1) approval from the IURC; or (2) alternative regulation by the IURC; to establish proof of financial responsibility in an amount determined by the IURC. Specifies that the IURC has jurisdiction over a merchant power plant that has made a significant alteration in the labor used to construct or remodel the facility. Provides that certain records of a merchant power plant are not public records. Requires the state utility forecasting group to conduct an annual regional power market study.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED SENATE BILL No. 29

A BILL FOR AN ACT to amend the Indiana Code concerning
utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-4-30 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]:

4 **Chapter 30. Center for Coal Technology Research**

5 **Sec. 1. As used in this chapter, "center" refers to the center for**
6 **coal technology research established by this chapter.**

7 **Sec. 2. As used in this chapter, "director" refers to the director**
8 **of the department of commerce.**

9 **Sec. 3. As used in this chapter, "fund" refers to the coal**
10 **technology research fund established by section 8 of this chapter.**

11 **Sec. 4. As used in this chapter, "Indiana coal" has the meaning**
12 **set forth in IC 8-1-2-6.1.**

13 **Sec. 5. The center for coal technology research is established to**
14 **perform the following duties:**

15 **(1) Develop technologies that can use Indiana coal in an**
16 **environmentally and economically sound manner.**

17 **(2) Investigate the reuse of clean coal technology byproducts,**

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including fly ash.

(3) Generate innovative research in the field of coal use.

(4) Develop new, efficient, and economical sorbents for effective control of emissions.

(5) Investigate ways to increase coal combustion efficiency.

(6) Develop materials that withstand higher combustion temperatures.

(7) Carry out any other matter concerning coal technology research as determined by the center.

Sec. 6. In carrying out its duties under this chapter, the center shall be located at Purdue University at West Lafayette and shall cooperate with and may use the resources of:

(1) Indiana University Geological Survey and other state educational institutions;

(2) a state or federal department or agency;

(3) a political subdivision; and

(4) interest groups representing business, environment, industry, science, and technology.

Sec. 7. To carry out the center's duties described in section 5 of this chapter, the director or the director's designee, acting on behalf of the center, may:

(1) organize the center in the manner necessary to implement this chapter;

(2) execute contractual agreements, including contracts for:

(A) the operation of the center;

(B) the performance of any of the duties described in section 5 of this chapter; and

(C) any other services necessary to carry out this chapter;

(3) receive money from any source for purposes of this chapter;

(4) expend money for an activity appropriate to the purposes of this chapter;

(5) execute agreements and cooperate with:

(A) Purdue University and other state educational institutions;

(B) a state or federal department or agency;

(C) a political subdivision; and

(D) interest groups representing business, the environment, industry, science, and technology; and

(6) subject to the approval of the budget agency, employ personnel as necessary for the efficient administration of this chapter.

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1 **Sec. 8. (a) The coal technology research fund is established to**
 2 **provide money for the center for coal technology research and for**
 3 **the director to carry out the duties specified under this chapter.**
 4 **The budget agency shall administer the fund.**

5 **(b) The fund consists of the following:**

6 **(1) Money appropriated by the general assembly.**

7 **(2) Gifts, grants, and bequests.**

8 **(c) The treasurer of state shall invest the money in the fund not**
 9 **currently needed to meet the obligations of the fund in the same**
 10 **manner as the treasurer may invest other public funds.**

11 **(d) Money in the fund at the end of a state fiscal year does not**
 12 **revert to the state general fund.**

13 SECTION 2. IC 4-23-5.5-16 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 16. (a) The Indiana coal
 15 research grant fund is established for the purpose of providing grants
 16 for research and other projects designed to develop and expand markets
 17 for Indiana coal. The fund shall be administered by the board.

18 (b) Sources of money for the fund consist of the following:

19 (1) Appropriations from the general assembly.

20 (2) Donations, gifts, and money received from any other source,
 21 including transfers from other funds or accounts.

22 (c) Money remaining in the fund at the end of a state fiscal year
 23 does not revert to the state general fund.

24 (d) The treasurer of state shall invest the money in the fund not
 25 currently needed to meet the obligations of the fund in the same
 26 manner as other public funds may be invested. Interest that accrues
 27 from these investments shall be deposited in the fund.

28 (e) The board shall establish:

29 (1) amounts for grants under this section; and

30 (2) criteria for awarding grants under this section.

31 (f) A person, business, or manufacturer that wants a grant from the
 32 fund must file an application in the manner prescribed by the board.

33 **(g) The department shall pursue available private and public**
 34 **sources of money for the fund.**

35 SECTION 3. IC 8-1-2-6.1 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6.1. (a) As used in this
 37 section, "clean coal technology" means a technology (including
 38 precombustion treatment of coal):

39 (1) that is used at a new or existing electric generating facility and
 40 directly or indirectly reduces airborne emissions of sulfur or
 41 nitrogen based pollutants associated with the combustion or use
 42 of coal; and



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(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

(f) The commission has jurisdiction over transactions involving the purchase of clean coal technology from third parties, including the purchase of precombustion coal treated by gasification. The commission's jurisdiction includes the authority to review the terms of a transaction and determine whether the transaction is in the public interest.

SECTION 4. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 83. (a) ~~No~~ This section does not apply to the following:

(1) A corporation organized or operating under IC 8-1-13.

(2) A corporation that:

(A) is organized under IC 23-17; and



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1 (B) has members that are local district corporations as
2 described in IC 8-1-13-23.

3 (b) As used in this section, "control" means the power to direct
4 the management and policies of a public utility, utility company, or
5 holding company through:

- 6 (1) ownership of voting securities or stock;
7 (2) the terms of a contract; or
8 (3) other means.

9 The term does not include power to direct management and
10 policies derived from holding an official position or corporate
11 office with the public utility, utility company, or holding company.
12 A person that owns, controls, or has the power to vote or the power
13 to vote proxies that constitute at least twenty percent (20%) of the
14 total vote power of a public utility, utility company, or holding
15 company is presumed to have control of the public utility, utility
16 company, or holding company.

17 (c) As used in this section, "holding company" means a
18 company that has control over at least one (1) of the following:

- 19 (1) A public utility.
20 (2) A utility company.

21 (d) As used in this section, "person" means:

- 22 (1) an individual;
23 (2) a firm;
24 (3) a corporation;
25 (4) a company;
26 (5) a partnership;
27 (6) a limited liability company;
28 (7) an association;
29 (8) a trustee;
30 (9) a lessee; or
31 (10) a receiver.

32 (e) As used in this section, "reorganization" means a transaction
33 that results in:

- 34 (1) a change in the ownership of a majority of the voting
35 capital stock of a public utility;
36 (2) a change in the ownership or control of an entity that owns
37 or controls a majority of the voting capital stock of a public
38 utility;
39 (3) the merger of two (2) or more public utilities; or
40 (4) the acquisition by a public utility of substantially all the
41 assets of another public utility.

42 (f) As used in this section, "utility company" means every

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corporation, company, partnership, limited liability company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment for the:

- (1) conveyance of telegraph or telephone messages;
- (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that acquires, owns, or operates any of the foregoing facilities.

(g) A public utility ~~as defined in section 1 of this chapter, shall~~ **may not do any of the following without approval of the commission after a hearing:**

- (1) Sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~
- (2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing.~~
~~And no such~~
- (3) ~~Contract for or effect a reorganization of the public utility.~~
- (4) **Acquire control of a public utility, utility company, or holding company.**

(h) A person may not acquire control of a public utility or a holding company of a public utility without approval of the commission after a hearing.

(i) A holding company that controls one (1) or more public utilities may not acquire control of a utility company without approval of the commission after a hearing.

(j) A public utility, except temporarily or in case of emergency and for a period of not exceeding thirty (30) days, ~~shall~~ **may not** make any special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility, without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

~~(k)~~ (k) The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under



1 this section shall not revive or validate any lapsed or invalid franchise,
 2 or enlarge or add to the powers and privileges contained in the grant of
 3 any franchise or waive any forfeiture. No such public utility shall
 4 directly or indirectly purchase, acquire, or become the owner of any of
 5 the property, stock, or bonds of any other public utility authorized to
 6 engage or engaged in the same or a similar business, or operating or
 7 purporting to operate under a franchise from the same or any other
 8 municipality or under an indeterminate permit unless authorized so to
 9 do by the commission.

10 **(l) The commission shall issue an order not later than one**
 11 **hundred thirty-five (135) days after a petition seeking approval is**
 12 **filed under this section. If the commission fails to issue an order**
 13 **within one hundred thirty-five (135) days after the petition is filed,**
 14 **the petition is considered approved.**

15 ~~(e)~~ **(m)** Nothing contained in this section shall prevent the holding
 16 of stock lawfully acquired before May 1, 1913, or prohibit, upon the
 17 surrender or exchange of said stock pursuant to a reorganization plan,
 18 the purchase, acquisition, taking, or holding by the owner of a
 19 proportionate amount of the stock of any new corporation organized to
 20 take over at foreclosure or other sale, the property of the corporation
 21 whose stock has been thus surrendered or exchanged.

22 ~~(d)~~ **(n)** Every contract by any public utility for the purchase,
 23 acquisition, assignment, or transfer to it of any of the stock of any other
 24 public utility by or through any person, partnership, limited liability
 25 company, or corporation without the approval of the commission shall
 26 be void and of no effect, and no such transfer or assignment of such
 27 stock upon the books of the corporation pursuant to any such contract
 28 shall be effective for any purpose.

29 SECTION 5. IC 8-1-2-115.5 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 2002]: **Sec. 115.5. (a) As used in this section, "account" refers to**
 32 **the commission public utility fund account established under**
 33 **IC 8-1-6.**

34 **(b) As used in this section, "order" means:**

- 35 **(1) a decision;**
- 36 **(2) a decree;**
- 37 **(3) a demand;**
- 38 **(4) a determination;**
- 39 **(5) a direction;**
- 40 **(6) an order;**
- 41 **(7) a requirement; or**
- 42 **(8) a rule;**



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1 of the commission.

2 (c) As used in this section, "utility" means:

- 3 (1) a public utility over which the commission has
 4 jurisdiction; or
 5 (2) the department of public utilities created under
 6 IC 8-1-11.1.

7 (d) The commission may issue an order under subsection (e)
 8 only if it finds, after notice and hearing, that a utility has:

- 9 (1) violated a provision of this title;
 10 (2) failed to comply with an order; or
 11 (3) failed to comply with an administrative rule adopted by
 12 the commission under this title.

13 (e) After making a finding under subsection (d), the commission
 14 may issue an order that does one (1) or more of the following:

15 (1) Imposes on a utility, other than a telephone company (as
 16 defined in section 88 of this chapter) that provides local
 17 exchange telephone service, a civil penalty of:

18 (A) five thousand dollars (\$5,000) for an initial violation or
 19 noncompliance found under subsection (d); or

20 (B) fifteen thousand dollars (\$15,000) for a second or
 21 subsequent violation or noncompliance found under
 22 subsection (d).

23 For purposes of this subdivision, each day that a violation or
 24 noncompliance occurs is a separate violation or
 25 noncompliance.

26 (2) Orders a utility to cease and desist from a violation or
 27 noncompliance found under subsection (d).

28 (3) Mandates corrective action by a utility to alleviate a
 29 violation or noncompliance found under subsection (d).

30 (4) Revokes or modifies the terms of a utility's:

31 (A) certificate of territorial authority;

32 (B) certificate of public convenience and necessity; or

33 (C) other permit issued by the commission.

34 (f) The commission shall consider the following when
 35 determining the amount of a civil penalty:

36 (1) The size of the utility.

37 (2) The gravity of the violation or noncompliance found under
 38 subsection (d).

39 (3) The good faith of the utility in remedying the violation or
 40 achieving compliance after receiving notice of a violation or
 41 noncompliance under subsection (d).

42 (g) This section does not apply to a violation or noncompliance

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found under subsection (d) that was the result of the following:

- (1) Customer provided equipment.
- (2) The negligent act of a customer.
- (3) An emergency situation.
- (4) An unavoidable casualty.
- (5) An act of God.

(h) The attorney general shall bring an action to enforce an order of the commission under subsection (e). If the attorney general prevails in an action under this subsection, the attorney general may recover reasonable attorney's fees and court costs.

(i) Civil penalties under this section are cumulative. A suit for recovery of a civil penalty does not affect:

- (1) the recovery of another civil penalty or forfeiture for a separate violation or noncompliance; or
- (2) a criminal prosecution against:
 - (A) a public utility;
 - (B) an agent, a director, an employee, or an officer of a public utility; or
 - (C) any other person.

(j) The secretary of the commission shall direct that a civil penalty collected under this section be distributed as follows:

- (1) A penalty assessed for a violation that directly affects ratepayers must be refunded directly to the customers of the violating utility in the form of a credit on customer bills.
- (2) A penalty assessed for a violation that directly harms another utility must be awarded directly to the other utility.
- (3) A penalty assessed for a violation that does not directly affect ratepayers or harm another utility must be deposited into the account.

(k) The commission shall use penalties deposited into the account for:

- (1) consumer education;
- (2) promotion of utility competition; or
- (3) any other purpose considered by the commission to further the public interest.

The commission shall report to the regulatory flexibility committee the distribution of deposits under this section.

(l) Penalties deposited into the account may not be included in:

- (1) the calculation of the difference between actual expenditures and appropriations described in IC 8-1-6-1(b); or
- (2) any public utility fee credit.



SECTION 6. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 128. (a) As used in this section, "utility" means:**

- (1) a public utility over which the commission has jurisdiction; or**
- (2) the department of public utilities created under IC 8-1-11.1.**

(b) If the commission:

- (1) determines that the provision of utility service is necessary to:**

- (A) prevent injury to a person; or**
- (B) alleviate an emergency; and**

- (2) directs a utility to provide utility service;**

the utility shall provide utility service within twenty-four (24) hours after receiving direction from the commission.

SECTION 7. IC 8-1-2-129 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 129. The commission may require a public utility to post a reasonable performance bond as a condition of the public utility's operation in Indiana. The amount of the reasonable performance bond may not exceed two million dollars (\$2,000,000).**

SECTION 8. IC 8-1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 2. (a) All fees herein prescribed shall be paid into the treasury of the state of Indiana through the secretary of the commission and quietused into an account to be known as the commission public utility fund account. This account shall be used for enforcing the provisions of IC 8-1-1 and IC 8-1-2 and shall be utilized only for the purpose of funding the expenses of the commission and the consumer counselor in amounts not in excess of their respective appropriations by the general assembly, plus the contingency fund. All appropriations under this chapter paid out of the commission public utility fund account shall be subject to the prior approval of the general assembly, the governor, and the state budget agency.**

(b) The secretary of the commission shall deposit into the account the following:

- (1) Fees collected from municipalities under IC 8-1-2-85. ~~shall also be deposited in the commission public utility fund account, as if they were fees collected from public utilities under this chapter.~~**

- (2) Civil penalties collected under IC 8-1-2-115.5.**

SECTION 9. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON

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Chapter 8.4. Merchant Power Plants

Sec. 1. This chapter does not apply to a merchant power plant that has filed a petition with the commission under IC 8-1-2.5 before March 1, 2001, seeking an order that the commission decline to exercise, in whole or in part, its jurisdiction over the merchant power plant.

Sec. 2. (a) As used in this chapter, "merchant power plant" means a facility within Indiana used for the:

(1) production, transmission, delivery, or furnishing of heat, light, or power; and

(2) sale of electric energy exclusively on the wholesale market; to other public utilities, energy service providers, or power marketers within or outside Indiana.

(b) The term includes a facility that has made a significant alteration to the labor used to construct or remodel the facility. For purposes of this subsection, a facility makes a significant alteration in the labor used to construct or remodel a facility if the person uses contractors, subcontractors, or work crews that include workers who are not participants in or have not completed a jointly administered labor and management apprenticeship program approved by the United States Department of Labor's Bureau of Apprenticeship Training.

(c) The term does not include a facility that is owned, controlled, or operated by a person that is obligated contractually to provide substantially all of the wholesale power requirements of an electricity supplier under a contract extending at least five (5) years.

Sec. 3. Except as provided in section 1 of this chapter, a merchant power plant is subject to the jurisdiction of the commission.

Sec. 4. (a) The commission shall consider the following when acting upon any petition by a merchant power plant under IC 8-1-2.5 or IC 8-1-8.5:

(1) Location.

(2) Need.

(3) Financing.

(4) Reporting requirements.

(5) Impact on electric, water, and natural gas suppliers and customers.

(6) The recommendation of the department of natural resources under section 12 of this chapter.



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(b) The commission shall issue a decision either approving or denying a merchant power plant's petition under IC 8-1-2.5 or IC 8-1-8.5 not later than eighteen (18) months after the date of the petition.

Sec. 5. (a) When petitioning the commission under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant must establish proof of financial responsibility by filing one (1) or a combination of the following with the commission:

- (1) A fully funded trust fund agreement.
- (2) A surety bond with a standby trust fund agreement.
- (3) A letter of credit with a standby trust fund agreement.
- (4) An insurance policy with a standby trust fund agreement.
- (5) Proof that the merchant power plant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).

(b) The amount of financial responsibility that a merchant power plant must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient to close the merchant power plant in a manner that:

- (1) minimizes the need for further maintenance and remediation; and
- (2) provides reasonable, foreseeable, and necessary maintenance and remediation after closure for at least twenty (20) years after the merchant power plant ceases operations.

(c) The commission may use:

- (1) a trust fund agreement;
- (2) a surety bond;
- (3) a letter of credit;
- (4) an insurance policy; or
- (5) other proof of financial responsibility;

filed under this section for the closure or post-closure monitoring, maintenance, or remediation of a merchant power plant approved by the commission, if the merchant power plant does not comply with closure or post-closure standards established by the commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish the following:

- (1) Standards for the proper closure and post-closure monitoring, maintenance, and remediation of merchant power plants.
- (2) Criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of



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1 financial responsibility provided by a merchant power plant
 2 may be released to the merchant power plant when the
 3 merchant power plant meets the closure and post-closure
 4 standards established under subdivision (1).

5 Sec. 6. (a) Not later than seven (7) days after filing a petition
 6 under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:

7 (1) send notice of the petition by United States mail to all
 8 record owners of real property located within one-half (1/2)
 9 mile of the proposed facility; and

10 (2) cause notice of the petition to be published in a newspaper
 11 of general circulation in each county in which the facility or
 12 proposed facility is or will be located.

13 (b) The notice of the petition shall include:

14 (1) a description of the facility or proposed facility; and

15 (2) the location, date, and time of the field hearing required by
 16 section 7 of this chapter.

17 Sec. 7. Not later than thirty (30) days after filing a petition
 18 under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall
 19 conduct a field hearing at a location in a county in which the
 20 facility or proposed facility is or will be located. The purpose of the
 21 field hearing is to determine local support for the merchant power
 22 plant.

23 Sec. 8. Not later than thirty (30) days after the field hearing
 24 required by section 7 of this chapter, a majority of the persons
 25 described in section 6(a)(1) of this chapter may request in writing
 26 a hearing before the commission.

27 Sec. 9. (a) Not later than thirty (30) days after a hearing is
 28 requested under section 8 of this chapter, the commission shall
 29 conduct a hearing at a location in a county in which the facility or
 30 proposed facility is or will be located. The hearing required by this
 31 subsection must be held:

32 (1) before or at the same time as the hearing required under
 33 IC 8-1-8.5-5(b); and

34 (2) before the commission issues a certificate of public
 35 convenience and necessity under IC 8-1-8.5.

36 (b) At least ten (10) days before the scheduled hearing, notice of
 37 the hearing must be served by first class mail on:

38 (1) all record owners of property located within one-half (1/2)
 39 mile of the proposed facility; and

40 (2) the merchant power plant.

41 (c) The parties to the hearing include:

42 (1) a person entitled to notice under section 9(b)(1) of this

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chapter; and

(2) the merchant power plant.

(d) The commission shall accept written or oral testimony from any person who appears at the public hearing, but the right to call and examine witnesses is reserved for the parties to the hearing.

(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

Sec. 10. Not later than forty-five (45) days after a hearing is conducted under section 9 of this chapter, the commission shall issue written findings based on the testimony presented at the hearing. To the extent the commission's findings differ from testimony presented at the hearing, the commission must explain its findings.

Sec. 11. When considering whether to approve a merchant power plant, the commission shall give preference to the following locations for siting:

(1) Brownfield sites that are isolated from populated areas.

(2) Sites of existing or former utilities that can be replaced or repowered.

(3) Other sites identified for power plant or heavy industrial development in local land use plans before the initiation of site selection for the facility.

Sec. 12. (a) For purposes of this section:

(1) "department" refers to the department of natural resources; and

(2) "water resource" has the meaning set forth in IC 14-25-7-8.

(b) When considering whether to approve a merchant power plant, the commission shall obtain a recommendation from the department regarding the merchant power plant's planned use of and its potential effect on the water resource.

(c) To make its recommendation, the department may do the following:

(1) Rely on the merchant power plant's water resource assessment under subsection (d).

(2) Consult with and advise users of the water resource.

(3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.

(4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.



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(5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.

(6) Engage in any other activity necessary to carry out the purposes of this section.

(d) A merchant power plant shall provide an assessment of its effect on the water resource and its users to the commission and the department. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1. The assessment must include the following information:

(1) Sources of water supply.

(2) Total amount of water to be used by the merchant power plant for each source.

(3) Location of wells or points of withdrawal.

(4) Ability of the water resource to meet the needs of the merchant power plant and other users.

(5) Probable effects of the merchant power plant's use and consumption of the water resource on other users.

(6) Alternative sources of water supply.

(7) Conservation measures proposed by the merchant power plant for reducing the plant's effect on the water resource.

(8) Other information required by any other law, rule, or regulation.

Sec. 13. Following the approval of a petition by the commission, the merchant power plant shall:

(1) notify the commission upon becoming an affiliate of any regulated Indiana utility selling electricity at retail to Indiana consumers, at which time the commission may reassert any jurisdiction it had declined under IC 8-1-2.5;

(2) obtain prior commission approval with respect to the sale of any electricity to any affiliated regulated Indiana retail utility or any affiliate of a regulated Indiana retail utility; and

(3) obtain prior commission approval of any transfers of ownership of the facility or its assets.

SECTION 10. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.4. Merchant Power Plant Certification and Siting

Sec. 1. As used in this chapter, "brownfield" has the meaning set forth in IC 13-11-2-19.3.

Sec. 2. (a) As used in this chapter, "merchant power plant"



means an electric generating facility all or a designated part of which is used for the production and sale of electric energy exclusively into the wholesale power market or to other utilities, energy service providers, or power marketers within or outside Indiana. However, for purposes of sections 2 through 18 of this chapter, the term does not include a plant all or a designated part of which, before becoming a plant or a designated part of a plant used for the production and sale of electric energy exclusively into the wholesale power market, was used to produce electric energy for sale to retail Indiana customers.

(b) The term does not include plants owned by any of the following:

- (1) A corporation organized and operating under IC 8-1-13.
- (2) A nonprofit Indiana corporation most of whose members are organized and operating under IC 8-1-13.
- (3) A joint agency created and operating under IC 8-1-2.2.
- (4) A municipally owned utility.

Sec. 3. As used in this chapter, "need" means a commission finding supported by substantial evidence that:

- (1) the regional power market has a projected need:
 - (A) for the type of capacity being proposed at or near the time the proposed merchant power plant is expected to become commercially operational; and
 - (B) that will not be met by other supply or demand side resources reasonably expected to be available at or near the time described in clause (A); and
- (2) the merchant power plant being proposed is likely to be dispatched with sufficient frequency in the wholesale regional power market over the period of its expected operating life to recover its revenue requirement.

Sec. 4. As used in this chapter, "person" means any corporation, company, partnership, limited liability company, individual, association of individuals, or their lessees, trustees, or receivers appointed by a court.

Sec. 5. As used in this chapter, "petitioner" means a person that files with the commission a petition under this chapter to site a merchant power plant.

Sec. 6. Any person that owns, operates, manages, or controls a merchant power plant in Indiana is a public utility (as defined in IC 8-1-2-1(a)).

Sec. 7. (a) A person may not begin to construct a merchant power plant by significantly altering a site to install permanent



equipment or structures unless the person files a petition with and obtains approval from the commission under this chapter.

(b) The commission shall issue a decision approving or denying a petition under the chapter not earlier than two hundred seventy (270) days after the filing of the petition.

(c) A person filing a petition under this chapter shall publish a notice of the filing in a newspaper of general circulation published in the county in which the proposed merchant power plant is to be located.

Sec. 8. (a) The commission may approve the siting of a merchant power plant if the commission determines that the siting of the merchant power plant is not adverse to the interests of the:

- (1) citizens of Indiana; and
- (2) citizens of the locality where the merchant power plant is proposed to be sited.

Sec. 9. The commission shall consider the following when acting upon a petition by a petitioner under this chapter:

- (1) The need for the merchant power plant.
- (2) The location of the merchant power plant.
- (3) The ownership or transfer of ownership of the merchant power plant.
- (4) The management of the merchant power plant.
- (5) The financing of the merchant power plant.
- (6) The capacity of the merchant power plant.
- (7) The type and size of the merchant power plant.
- (8) The type of fuel used by the merchant power plant.
- (9) The merchant power plant's fuel supply arrangements and its effect on the reliability of Indiana's electrical system and the price and availability of the fuel for other uses in Indiana, taking into account the effects of other merchant power plants.
- (10) The merchant power plant's electric supply contracts.
- (11) The merchant power plant's effect on the electric and gas transmission systems serving Indiana.
- (12) The merchant power plant's effect on:
 - (A) water supplies and usage, taking into account the effects of other merchant power plants using the same or interconnected sources of water; and
 - (B) current users of the sources of water.
- (13) Local ordinances and area plans.
- (14) Oral and written testimony received by the commission under section 13 of this chapter.



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(15) The results of the study required under section 21 of this chapter.

(16) Other factors that the commission considers relevant in making a determination required under this chapter.

Sec. 10. The petitioner must provide documentation to the commission that it has thoroughly considered the feasibility and economics of the following types of sites:

(1) Brownfield sites that are isolated from populated areas.

(2) Sites of existing or former utilities that can be replaced or repowered.

(3) Other sites identified for power plant and heavy industrial development in local land use plans before the initiation of site selection for the merchant power plant.

Sec. 11. (a) As used in this section:

(1) "department" refers to the department of natural resources; and

(2) "water resource" has the meaning set forth in IC 14-25-7-8.

(b) When considering whether to approve a merchant power plant, the commission shall obtain a recommendation from the department regarding the merchant power plant's planned use of and its potential effect on the water resource.

(c) In making its recommendation, the department may do the following:

(1) Rely on the merchant power plant's water resource assessment under subsection (d).

(2) Consult with and advise users of the water resource.

(3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.

(4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.

(5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.

(6) Engage in any other activity necessary to carry out the purposes of this section.

(d) A petitioner shall provide to the commission and the department an assessment of the proposed merchant power plant's effect on the water resource and its users. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1. The



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assessment must include the following information:

- (1) Sources of water supply.
- (2) Total amount of water to be used by the merchant power plant for each source.
- (3) Location of wells or points of withdrawal.
- (4) Ability of the water resource to meet the needs of the merchant power plant and other users.
- (5) Ability of the water resource to meet the future needs of the county in which the proposed merchant power plant is to be located.
- (6) Alternative sources of water supply.
- (7) Conservation measures proposed by the petitioner for reducing the merchant power plant's effect on the water resource.

Sec. 12. (a) If a person files a petition with the commission under this chapter or any other law for the siting of a merchant power plant, the person must establish proof of financial responsibility by filing one (1) or a combination of the following with the commission at a time, either before or after commission approval of the petition, that shall be determined by the commission:

- (1) A fully funded trust fund agreement.
- (2) A surety bond with a standby trust fund agreement.
- (3) A letter of credit with a standby trust fund agreement.
- (4) An insurance policy with a standby trust fund agreement.
- (5) Proof that the merchant power plant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).

(b) The amount of financial responsibility that a person must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient, but not more than reasonably necessary, to:

- (1) fully decommission the site and remove structures, equipment, and site hazards;
 - (2) minimize the need for further maintenance and remediation; and
 - (3) provide for reasonable, foreseeable, and necessary maintenance and remediation after closure of the merchant power plant for at least twenty (20) years;
- after the merchant power plant ceases operations.

(c) The commission may use:

- (1) a trust fund agreement;
- (2) a surety bond;



- (3) a letter of credit;
- (4) an insurance policy; or
- (5) other proof of financial responsibility;

filed under this section for the closure and post closure monitoring, maintenance, or remediation of a merchant power plant approved by the commission if the merchant power plant does not comply with closure or post closure standards established by the commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of financial responsibility provided by a merchant power plant meets the standards to decommission the merchant power plant under subsection (b)(1).

Sec. 13. (a) Not later than thirty (30) days after the petitioner has prefiled its testimony before the commission for the siting of a merchant power plant under this chapter, the commission shall conduct a hearing at a location in the county in which the merchant power plant is proposed.

(b) The commission shall send notice of the hearing by first class mail at least ten (10) days before the hearing to the following:

(1) Relevant state regulatory agencies, as determined by the commission.

(2) Zoning and area plan authorities for the:

(A) county; and

(B) municipality, if any;

where the merchant power plant is proposed.

(3) Record owners of real property located within one-half (1/2) mile of the proposed site for the merchant power plant. However, at the commission's discretion, the commission may require notification to record owners of real property located within not more than two (2) miles of the proposed site in sparsely populated areas.

(c) The commission shall cause notice of the hearing to be published in a newspaper of general circulation in each county in which the merchant power plant is proposed. The publication required under this subsection must occur once a week for two (2) weeks, with the second publication occurring at least fifteen (15) days before the date of the hearing.

(d) The commission shall accept written and oral testimony from any person who appears at the public hearing.

(e) The commission shall make a record of the hearing and all



1 testimony received. The commission shall make the record
2 available for public inspection.

3 **Sec. 14. Following the approval of a petition by the commission,**
4 **the merchant power plant shall submit the following to the**
5 **commission:**

6 (1) At least one (1) week before commencement of
7 construction activities, a startup report that includes the:

8 (A) status of necessary permits; and

9 (B) expected in service date.

10 (2) A midpoint report, to be submitted at a time determined
11 by the commission, that includes information concerning the:

12 (A) status of construction; and

13 (B) expected in service date.

14 (3) A testing notice at least two (2) weeks before any testing of
15 the merchant power plant.

16 (4) At the time of the initial commercial operation of the
17 merchant power plant, an in service notice that includes the
18 following:

19 (A) Contracts for firm utility sales and contracts for firm
20 sales to Indiana utilities.

21 (B) A summary of fuel contracts, including any pipelines
22 involved in the transactions.

23 (C) Contingency plans, if any, detailing response plans to
24 emergency conditions as required by state or local units of
25 government, transmission owners, or any regional
26 transmission grid operator.

27 (D) Certified dependable capacity rating.

28 (5) Not later than thirteen (13) months after the in service
29 date, a first year report that includes the following:

30 (A) Summer and winter dependable capacity ratings.

31 (B) The annual capacity factor, including the summer and
32 winter seasonal capacity factor.

33 (C) The hours of operation for each season.

34 (D) Total annual, peak day, and summer seasonal water
35 usage and discharge.

36 (E) An itemization of transmission load restrictions or
37 other operational restrictions incurred during the year.

38 (F) The number of employees employed by the merchant
39 power plant.

40 (6) Other information requested by the commission.

41 **Sec. 15. Following approval of a petition for the siting of a**
42 **merchant power plant by the commission, the petitioner must:**



- (1) notify the commission upon becoming an affiliate of any regulated Indiana utility selling electricity at retail to Indiana consumers;
- (2) obtain prior commission approval for the sale of electricity to any affiliate that is a regulated Indiana retail utility, except for electricity purchased on the wholesale spot market;
- (3) obtain prior commission approval of any transfers of ownership of the merchant power plant or its assets;
- (4) obtain commission approval before altering the capacity or significantly altering the size of the merchant power plant; and
- (5) obtain commission approval before altering the type of fuel used.

Sec. 16. After notice and hearing, the commission may withdraw its approval for the siting of a merchant power plant if the petitioner or subsequent owner or operator:

- (1) fails to commence construction of the merchant power plant within two (2) years of the date of the commission's order of approval and is no longer diligently pursuing the commencement of construction of the merchant power plant; or
- (2) fails to complete construction of the merchant power plant within five (5) years of the date of the commission's order of approval.

Sec. 17. (a) A person that receives commission approval of the siting of a merchant power plant under this chapter or any other law, or the subsequent owner or operator of the merchant power plant for which siting approval is given, must operate the merchant power plant in accordance with the commission's order of approval.

(b) If the commission finds that the merchant power plant is not operating in accordance with the commission's approval, the commission may:

- (1) order an investigation; and
- (2) revoke the approval after the investigation, a hearing, and the conclusion of the appeals process.

Sec. 18. (a) Notwithstanding IC 8-1-2.5-5, the commission may not decline to exercise its jurisdiction under this chapter with respect to a merchant power plant. However, the commission may adopt rules under IC 4-22-2 to establish procedures for the exercise of its jurisdiction under this chapter that differ according to the type, size, or fuel resource of the merchant power plant.



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(b) Whenever the commission substantially declines its jurisdiction under IC 8-1-2.5 with respect to a merchant power plant and its developer, the developer may not exercise the powers conferred under IC 4-20.5-7-10.5, IC 5-11-10-1(c)(1), IC 6-1.1-8-1 or IC 8-1-8-1, or any other rights, privileges, or immunities conferred by law on electric utilities assigned service areas under IC 8-1-2.3 on account of the obligation of electric utilities to serve the general public without undue discrimination at regulated rates and charges.

(c) Except as provided by federal law, the commission has sole and exclusive jurisdiction over the siting and location of utility facilities, including merchant power plants.

Sec. 19. Information pertaining to:

- (1) fuel arrangements or contracts; or
- (2) electric sales and contracts;

of merchant power plants that are approved by the commission under this chapter or any other law is not a public record under IC 5-14-3.

Sec. 20. The commission shall direct the state utility forecasting group established under IC 8-1-8.5-3.5 to conduct an annual regional power market study to assess:

- (1) the need for merchant power plant additions in the region;
- (2) the effect of merchant power plants on the price of fuels used by merchant power plants;
- (3) the effect of merchant power plants on the price of electricity;
- (4) the effect of merchant power plant construction and operation on the deployment of demand side resources regionally and in Indiana;
- (5) the amount of merchant power plant capacity contracted to Indiana electric utilities;
- (6) the amount of merchant power plant capacity contracted to out of state marketers and electric utilities; and
- (7) other issues the commission considers relevant.

SECTION 11. IC 8-1-8.8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.8. Utility Generation and Clean Coal Technology

Sec. 1. (a) The general assembly makes the following findings:

- (1) Growth of Indiana's population and economic base has created a need for new energy generating facilities in Indiana.
- (2) The development of a robust and diverse portfolio of



energy generating capacity, including the use of renewable energy resources, is needed if Indiana is to continue to be successful in attracting new businesses and jobs.

(3) Indiana has considerable natural resources that are currently underutilized and could support development of new energy generating facilities at an affordable price.

(4) Certain regions of the state, such as southern Indiana, could benefit greatly from new employment opportunities created by development of new energy generating facilities utilizing the plentiful supply of coal from the geological formation known as the Illinois basin.

(5) Technology can be deployed that allows high sulfur coal from the geological formation known as the Illinois Basin to be burned efficiently while meeting strict state and federal air quality limitations. Specifically, the state should encourage the use of advanced clean coal technology, such as coal gasification.

(6) It is in the public interest for the state to encourage the construction of new energy generating facilities that increase the in-state capacity to provide for current and anticipated energy demand at a competitive price.

(b) The purpose of this chapter is to enhance Indiana's energy security and reliability by ensuring all of the following:

(1) Indiana's energy generating capacity continues to be adequate to provide for Indiana's current and future energy needs, including the support of the state's economic development efforts.

(2) The vast and underutilized coal resources of the Illinois Basin are used as a fuel source for new energy generating facilities.

(3) The electric transmission system within Indiana is upgraded to distribute additional amounts of electricity more efficiently.

(4) Jobs are created as new energy generating facilities are built in regions throughout Indiana.

Sec. 2. As used in this chapter, "clean coal and energy projects" means any of the following:

(1) Any of the following projects:

(A) Projects at new energy generating facilities that employ the use of clean coal technology and that are fueled primarily by coal or gases derived from coal from the geological formation known as the Illinois Basin.

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(B) Projects to provide advanced technologies that reduce regulated air emissions from existing energy generating plants that are fueled primarily by coal or gases from coal from the geologic formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment.

(2) Projects to develop alternative energy sources, including renewable energy projects.

(3) The purchase of fuels produced by a coal gasification facility.

Sec. 3. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

Sec. 4. As used in this chapter, "coal gasification facility" means a facility in Indiana that uses a manufacturing process that converts coal into a clean gas that can be used as a fuel to generate energy.

Sec. 5. As used in this chapter, "costs associated with qualified utility system property" means capital, operation, maintenance, depreciation, tax costs, and financing costs of or for qualified utility system property.

Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) that:

(1) proposes to construct or repower a new energy generating facility;

(2) proposes to construct or repower a project described in section 2(1) or 2(2) of this chapter;

(3) undertakes a project to develop alternative energy sources, including renewable energy projects; or

(4) purchases fuels produced by a coal gasification facility.

Sec. 7. As used in this chapter, "group" refers to the forecasting

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group established by IC 8-1-8.5-3.5.

Sec. 8. (a) As used in this chapter, "new energy generating facility" refers to a facility that satisfies all of the following:

(1) The facility is fueled primarily by coal or gases from coal from the geologic formation known as the Illinois Basin.

(2) The facility is a:

(A) newly constructed or newly repowered energy generation plant; or

(B) newly constructed generation capacity expansion at an existing facility;

dedicated primarily to serving Indiana retail customers.

(3) The repowering, construction, or expansion of the facility was begun by an Indiana utility after July 1, 2002.

(3) The facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines and associated equipment employed specifically to serve a new energy generating facility.

Sec. 9. As used in this chapter, "qualified utility system property" means any new energy generating facility used, or to be used, in whole or in part, on a utility system to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether that service is provided under IC 8-1-2.5 or another provision of this article.

Sec. 10. (a) As used in this chapter, "renewable energy resources" means alternative sources of renewable energy, including the following:

(1) Energy from wind.

(2) Solar energy.

(3) Photovoltaic cells and panels.

(4) Dedicated crops grown for energy production.

(5) Organic waste biomass.

(6) Hydropower from existing dams.

(b) The term does not include energy from the incinerations, burning, or heating of any of the following:

(1) Waste wood.

(2) Tires.

(3) General household, institutional, commercial, industrial lunchroom, office, or landscape waste.

(4) Construction or demolition debris.



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1 **Sec. 11. (a) The commission shall encourage clean coal and**
 2 **energy projects by creating the following financial incentives for**
 3 **clean coal and energy projects, if the projects are found to be in the**
 4 **public interest, convenience, and necessity:**

5 **(1) The timely recovery of costs incurred during construction**
 6 **and operation of projects described in section 2(1) or 2(2) of**
 7 **this chapter.**

8 **(2) The authorization of up to three (3) percentage points on**
 9 **the return on shareholder equity that would otherwise be**
 10 **allowed to be earned on projects described in subdivision (1).**

11 **(3) Financial incentives for the purchase of fuels produced by**
 12 **a coal gasification facility, including cost recovery and the**
 13 **incentive available under subdivision (2).**

14 **(4) Financial incentives for projects to develop alternative**
 15 **energy sources, including renewable energy projects.**

16 **(5) Other financial incentives the commission considers**
 17 **appropriate.**

18 **(b) An eligible business must file an application to the**
 19 **commission for approval of a clean coal and energy project under**
 20 **this section.**

21 **(c) The commission shall promptly review an application filed**
 22 **under this section for completeness. The commission may request**
 23 **additional information the commission considers necessary to aid**
 24 **in its review.**

25 **(d) The commission shall, after notice and hearing, issue a**
 26 **determination of a project's eligibility for the financial incentives**
 27 **described in subsection (a) not later than one hundred eighty (180)**
 28 **days after the date of the application, unless the commission finds**
 29 **that the applicant has not cooperated fully in the proceeding.**

30 **Sec. 12. (a) The commission shall provide financial incentives to**
 31 **eligible businesses for new energy generating facilities in the form**
 32 **of timely recovery of the costs incurred in connection with the**
 33 **construction, repowering, expansion, operation, or maintenance of**
 34 **the facilities, in place of the normal allowance for funds used**
 35 **during construction (AFUDC) recovery.**

36 **(b) An eligible business seeking authority to timely recover the**
 37 **costs described in subsection (a) must apply to the commission for**
 38 **approval of a rate adjustment mechanism in the manner**
 39 **determined by the commission.**

40 **(c) An application must include the following:**

41 **(1) A schedule for the completion of construction, repowering,**
 42 **or expansion of the new energy generating facility for which**

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rate relief is sought.

(2) Copies of the most recent integrated resource plan filed with the commission.

(3) The amount of capital investment by the eligible business in the new energy generating facility.

(4) Other information the commission considers necessary.

(d) The commission shall allow an eligible business to recover the costs associated with qualified utility system property if the eligible business provides substantial documentation that the expected costs associated with qualified utility system property and the schedule for incurring those costs are reasonable and the generation capacity is needed.

(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels produced by a coal gasification facility if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and in the public interest.

(f) A retail rate adjustment mechanism proposed by an eligible business under this section may be based on actual or forecasted data. If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs.

Sec. 13. An eligible business shall file a monthly report with the department of commerce stating the following information:

(1) The amount of Illinois Basin coal, if any, purchased during the previous month for use in a new energy generating facility.

(2) The amount of any fuel produced by a coal gasification facility and purchased by the eligible business during the previous month.

(3) Any other information the department of commerce may reasonably require.

Sec. 14. The group shall conduct an annual study on the use, availability, and economics of using renewable energy resources in Indiana. Each year, the group shall submit a report on the study to the commission for inclusion in the commission's annual report to the regulatory flexibility committee described in IC 8-1-2.5-9 and IC 8-1-2.6-4. The report must include suggestions from the group to encourage the development and use of renewable energy resources and technologies appropriate for use in Indiana.

Sec. 15. If any part of this chapter is found to be unlawful, the commission shall annually review any project approved under this

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chapter to determine that the project continues to be:

- (1) in the public interest, convenience, and necessity; and
- (2) consistent with the commission's findings in the order initially approving incentives under this chapter.

SECTION 12. IC 8-1-2-115 IS REPEALED [EFFECTIVE JULY 1, 2002].

SECTION 13. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission established under IC 8-1-1-2.

(b) Except as provided in subsection (c), a petitioner that files for commission approval of the siting of a merchant power plant before the effective date of this act is not subject to IC 8-1-8.4, as added by this act.

(c) A petitioner that files for commission approval of the siting of a merchant power plant before the effective date of this act is subject to:

- (1) IC 8-1-8.4-6;
- (2) IC 8-1-8.4-12;
- (3) IC 8-1-8.4-15;
- (4) IC 8-1-8.4-17;
- (5) IC 8-1-8.4-18(b); and
- (6) IC 8-1-8.4-19;

all as added by this act. If a petitioner has filed for commission approval of the siting of a merchant power plant and the commission has not issued an order approving or denying the petition before the effective date of this act, the petitioner is also subject to IC 8-1-8.4-16, as added by this act.

SECTION 14. An emergency is declared for this act.

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SENATE MOTION

Mr. President: I move that Senator Garton be removed as author of Senate Bill 29 and that Senator Weatherwax be substituted therefor.

GARTON

SENATE MOTION

Mr. President: I move that Senator Lanane be added as second author and Senators Server and Waterman be added as coauthors of Senate Bill 29.

WEATHERWAX

SENATE MOTION

Mr. President: I move that Senator Blade be added as coauthor of Senate Bill 29.

WEATHERWAX

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COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 29, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Energy and Economic Development.

(Reference is to SB 29 as introduced.)

GARTON, Chairperson

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COMMITTEE REPORT

Mr. President: The Senate Committee on Energy and Economic Development, to which was referred Senate Bill No. 29, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 7, delete "electric generating capacity" and insert **"energy generating facilities"**.

Page 1, line 9, delete "electric" and insert **"energy"**.

Page 1, line 9, delete "capacity" and insert **"capacity, including the use of renewable energy resources,"**.

Page 1, line 13, delete "electric power" and insert **"energy generating facilities"**.

Page 1, line 16, delete "electric generating plants" and insert **"new energy generating facilities"**.

Page 1, line 17, delete "Indiana coal." and insert **"coal from the geological formation known as the Illinois basin."**

Page 2, line 8, delete "electric" and insert **"energy"**.

Page 2, line 10, delete "electricity" and insert **"energy"**.

Page 2, line 12, after "security" insert **"and reliability"**.

Page 2, line 13, delete "electric" and insert **"energy"**.

Page 2, line 15, delete "electricity" and insert **"energy"**.

Page 2, line 18, delete "electric plants." and insert **"energy generating facilities."**

Page 2, line 22, delete "electric plants" and insert **"energy generating facilities"**.

Page 2, line 25, delete **"new electric"** and insert **"any of the following:**

(1) New energy".

Page 2, delete line 28.

Page 2, line 29, delete "(2)", begin a new line double block indented, and insert:

"(A)".

Page 2, delete lines 30 through 31.

Page 2, line 32, delete "(4)", begin a new line double block indented, and insert:

"(B)".

Page 2, line 34, delete "(5)", begin a new line double block indented, and insert:

"(C)".

Page 2, between lines 34 and 35, begin a new line block indented

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and insert:

"(2) Projects to develop alternative energy sources, including renewable energy projects.

(3) The purchase of fuels produced by a coal gasification facility."

Sec. 3. As used in this chapter, "clean coal technology" has the meaning set forth in IC 8-1-8.7-1.

Sec. 4. As used in this chapter, "coal gasification facility" means a facility in Indiana that uses a manufacturing process that converts coal into a clean gas that can be used as a fuel to generate energy."

Page 2, line 35, delete "3." and insert **"5."**

Page 2, line 39, delete "4." and insert **"6."**

Page 2, line 40, delete "that" and insert **"that :**

(1)".

Page 2, line 41, delete "electric" and insert **"energy"**.

Page 2, line 41, delete "facility." and insert **"facility;**

(2) undertakes a project to develop alternative energy sources, including renewable energy projects; or

(3) purchases fuels produced by a coal gasification facility."

Page 2, line 42, delete "5." and insert **"7."**

Page 3, line 2, delete "6." and insert **"8."**

Page 3, line 2, delete "electric" and insert **"energy"**.

Page 3, line 6, delete "electric" and insert **"energy"**.

Page 3, line 10, delete "or construction" and insert **"construction, or expansion"**.

Page 3, line 12, after "rated" insert **"electric"**.

Page 3, line 14, delete "site." and insert **"site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam."**

Page 3, line 16, delete "electricity" and insert **"energy"**.

Page 3, line 18, delete "7." and insert **"9."**

Page 3, line 19, delete "electric" and insert **"energy"**.

Page 3, line 20, delete "to generate electricity".

Page 3, line 24, delete "8." and insert **"10."**

Page 3, delete line 29.

Page 3, line 30, delete "(4)" and insert **"(3)"**.

Page 3, line 31, delete "(5)" and insert **"(4)"**.

Page 3, line 32, delete "(6)" and insert **"(5)"**.

Page 3, line 33, delete "(7) Hydropower." and insert **"(6) Hydropower from existing dams."**

Page 3, line 41, delete "9." and insert **"11."**

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Page 4, line 1, delete "the construction and operation of" and insert **"clean coal and energy"**.

Page 4, line 3, delete "operation." and insert **"operation of new energy generating facilities."**

Page 4, line 4, delete "hundred (300) basis" and insert **"(3) percentage"**.

Page 4, line 6, delete "such projects." and insert **"projects described in subdivision (1)."**

Page 4, between lines 6 and 7, begin a new line block indented and insert:

"(3) Financial incentives for the purchase of fuels produced by a coal gasification facility, including cost recovery and the incentive available under subdivision (2) for new energy generating facilities.

(4) Financial incentives for projects to develop alternative energy sources, including renewable energy projects."

Page 4, line 7, delete "(3)" and insert **"(5)"**.

Page 4, between lines 15 and 16, begin a new paragraph and insert:

"(d) The commission shall issue a preliminary determination of a project's eligibility for the financial incentives described in subsection (a) not later than ninety (90) days after the date of the application."

Page 4, line 16, delete "10." and insert **"12."**

Page 4, line 17, delete "electric" and insert **"energy"**.

Page 4, line 19, after "repowering," insert **"expansion,"**

Page 4, line 27, delete "or acquisition" and insert **"acquisition, or expansion"**.

Page 4, line 27, delete "electric" and insert **"energy"**.

Page 4, line 32, delete "electric" and insert **"energy"**.

Page 4, line 36, delete "of" and insert **"that"**.

Page 4, line 38, delete "costs." and insert **"costs are reasonable and in the public interest."**

Page 4, between lines 38 and 39, begin a new paragraph and insert:

"(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels produced by a coal gasification facility if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and in the public interest."

Page 4, line 39, delete "(e)" and insert **"(f)"**.

Page 4, line 42, delete "(f)" and insert **"(g)"**.

Page 5, line 5, delete "(g)" and insert **"Sec. 13."**

Page 5, line 8, delete "the new electric" and insert **"a new energy"**.

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Page 5, delete lines 10 through 12.

Page 5, between lines 12 and 13, begin a new line block indented and insert:

"(2) The amount of any fuel produced by a coal gasification facility and purchased by the eligible business during the previous month."

Page 5, line 13, delete "(4) Such other information as" and insert **"(3) Any other information"**.

Page 5, line 15, delete "11." and insert **"14."**

Page 5, line 19, delete "IC 8-1-25-9" and insert **"IC 8-1-2.5-9"**.

and when so amended that said bill do pass.

(Reference is to SB 29 as printed January 18, 2002.)

WEATHERWAX, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Mr. President: I move that Senator Hume be added as coauthor of Senate Bill 29.

WEATHERWAX

SENATE MOTION

Mr. President: I move that Senate Bill 29 be amended to read as follows:

Page 2, line 29, delete "New energy generating facilities that are fueled primarily" and insert **"Any of the following projects:"**.

Page 2, delete lines 30 through 32.

Page 2, line 33, after "Projects" insert **"at new energy generating facilities"**.

Page 2, line 33, delete "." and insert **"and that are fueled primarily by coal or gases derived from coal from the geological formation known as the Illinois Basin."**

Page 2, line 34, delete "scrubber technology for" and insert **"advanced technologies that reduce regulated air emissions from"**.

Page 2, line 35, delete "." and insert **", such as flue gas desulfurization and selective catalytic reduction equipment."**

Page 3, between lines 12 and 13, begin a new line block indented and insert:

"(2) proposes to construct, repower, or acquire a project described in section 2(1) of this chapter;".

Page 3, line 13, delete "(2)" and insert **"(3)"**.

Page 3, line 15, delete "(3)" and insert **"(4)"**.

Page 4, line 20, delete "new energy generating facilities." and insert **"projects described in section 2(1) of this chapter."**

Page 4, line 26, delete "for new energy" and insert ".".

Page 4, delete line 27.

Page 4, line 39, delete "preliminary".

Page 5, line 23, delete "and in the" and insert ".".

Page 5, delete line 24.

Page 5, line 29, delete "and in the public interest".

Page 5, line 32, after "data." insert **"If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs."**



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Page 5, delete lines 33 through 37.

(Reference is to SB 29 as printed January 30, 2002.)

WEATHERWAX

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SENATE MOTION

Mr. President: I move that Senator Gard be added as coauthor of
Engrossed Senate Bill 29.

WEATHERWAX

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures, to which was referred Senate Bill 29, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-4-30 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 30. Center for Coal Technology Research

Sec. 1. As used in this chapter, "center" refers to the center for coal technology research established by this chapter.

Sec. 2. As used in this chapter, "director" refers to the director of the department of commerce.

Sec. 3. As used in this chapter, "fund" refers to the coal technology research fund established by section 8 of this chapter.

Sec. 4. As used in this chapter, "Indiana coal" has the meaning set forth in IC 8-1-2-6.1.

Sec. 5. The center for coal technology research is established to perform the following duties:

- (1) Develop technologies that can use Indiana coal in an environmentally and economically sound manner.
- (2) Investigate the reuse of clean coal technology byproducts, including fly ash.
- (3) Generate innovative research in the field of coal use.
- (4) Develop new, efficient, and economical sorbents for effective control of emissions.
- (5) Investigate ways to increase coal combustion efficiency.
- (6) Develop materials that withstand higher combustion temperatures.
- (7) Carry out any other matter concerning coal technology research as determined by the center.

Sec. 6. In carrying out its duties under this chapter, the center shall be located at Purdue University at West Lafayette and shall cooperate with and may use the resources of:

- (1) Indiana University Geological Survey and other state educational institutions;
- (2) a state or federal department or agency;
- (3) a political subdivision; and
- (4) interest groups representing business, environment, industry, science, and technology.



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Sec. 7. To carry out the center's duties described in section 5 of this chapter, the director or the director's designee, acting on behalf of the center, may:

- (1) organize the center in the manner necessary to implement this chapter;**
- (2) execute contractual agreements, including contracts for:**
 - (A) the operation of the center;**
 - (B) the performance of any of the duties described in section 5 of this chapter; and**
 - (C) any other services necessary to carry out this chapter;**
- (3) receive money from any source for purposes of this chapter;**
- (4) expend money for an activity appropriate to the purposes of this chapter;**
- (5) execute agreements and cooperate with:**
 - (A) Purdue University and other state educational institutions;**
 - (B) a state or federal department or agency;**
 - (C) a political subdivision; and**
 - (D) interest groups representing business, the environment, industry, science, and technology; and**
- (6) subject to the approval of the budget agency, employ personnel as necessary for the efficient administration of this chapter.**

Sec. 8. (a) The coal technology research fund is established to provide money for the center for coal technology research and for the director to carry out the duties specified under this chapter. The budget agency shall administer the fund.

(b) The fund consists of the following:

- (1) Money appropriated by the general assembly.**
- (2) Gifts, grants, and bequests.**

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as the treasurer may invest other public funds.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 2. IC 4-23-5.5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 16. (a) The Indiana coal research grant fund is established for the purpose of providing grants for research and other projects designed to develop and expand markets for Indiana coal. The fund shall be administered by the board.

(b) Sources of money for the fund consist of the following:

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- (1) Appropriations from the general assembly.
- (2) Donations, gifts, and money received from any other source, including transfers from other funds or accounts.
- (c) Money remaining in the fund at the end of a state fiscal year does not revert to the state general fund.
- (d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.
- (e) The board shall establish:
 - (1) amounts for grants under this section; and
 - (2) criteria for awarding grants under this section.
- (f) A person, business, or manufacturer that wants a grant from the fund must file an application in the manner prescribed by the board.

(g) The department shall pursue available private and public sources of money for the fund.

SECTION 3. IC 8-1-2-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6.1. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

- (1) that is used at a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur or nitrogen based pollutants associated with the combustion or use of coal; and
- (2) that either:
 - (A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or
 - (B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.
- (b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.
- (c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:
 - (1) research and development designed to increase use of Indiana coal; and
 - (2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or



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existing coal burning electric generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal;

after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

(f) The commission has jurisdiction over transactions involving the purchase of clean coal technology from third parties, including the purchase of precombustion coal treated by gasification. The commission's jurisdiction includes the authority to review the terms of a transaction and determine whether the transaction is in the public interest."

Page 2, line 36, delete ", " and insert **"that are fueled primarily by coal or gases from coal from the geologic formation known as the Illinois Basin,"**.

Page 2, delete line 38.

Page 3, line 1, delete "has the" and insert **"means a technology (including precombustion treatment of coal):**

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989."

Page 3, delete line 2.

Page 3, line 13, delete ", repower, or acquire" and insert **"or repower"**.

Page 3, line 15, delete ", repower, or acquire" and insert **"or repower"**.

Page 3, line 16, after "2(1)" insert **"or 2(2)"**.



Page 3, between lines 23 and 24, begin a new line block indented and insert:

"(1) The facility is fueled primarily by coal or gases from coal from the geologic formation known as the Illinois Basin."

Page 3, line 24, delete "(1)" and insert "(2)".

Page 3, line 25, delete ", newly repowered, or newly" and insert "**or newly repowered**".

Page 3, line 26, delete "acquired".

Page 3, line 30, delete "(2) The acquisition," and insert "**(3) The**".

Page 3, line 31, delete "completed" and insert "**begun**".

Page 3, line 32, delete "2001" and insert "**2002**".

Page 3, line 38, delete "that transfers energy from points of supply to points of" and insert "**employed specifically to serve a new energy generating facility**".

Page 3, delete line 39.

Page 4, line 22, delete ":" and insert "**, if the projects are found to be in the public interest, convenience, and necessity:**".

Page 4, line 24, after "2(1)" insert "**or 2(2)**".

Page 4, line 27, delete "overall rate of return" and insert "**return on shareholder equity**".

Page 5, line 1, after "shall" insert "**, after notice and hearing,**".

Page 5, line 3, delete "ninety (90) days after the date of the application." and insert "**one hundred eighty (180) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.**".

Page 5, line 7, delete "acquisition,".

Page 5, line 8, delete "." and insert "**, in place of the normal allowance for funds used during construction (AFUDC) recovery.**".

Page 5, line 15, delete "acquisition,".

Page 5, line 26, delete "." and insert "**and the generation capacity is needed.**".

Page 5, line 31, delete "." and insert "**and in the public interest.**".

Page 6, between lines 12 and 13, begin a new paragraph and insert:

"Sec. 15. If any part of this chapter is found to be unlawful, the commission shall annually review any project approved under this chapter to determine that the project continues to be:

(1) in the public interest, convenience, and necessity; and

(2) consistent with the commission's findings in the order initially approving incentives under this chapter."

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 29 as reprinted February 5, 2002.)

MOSES, Chair

Committee Vote: yeas 7, nays 3.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 29 be amended to read as follows:

Page 4, between lines 36 and 37, begin a new paragraph and insert:
"SECTION 4. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 83. (a) ~~No~~ This section does not apply to the following:

- (1) A corporation organized or operating under IC 8-1-13.**
- (2) A corporation that:**
 - (A) is organized under IC 23-17; and**
 - (B) has members that are local district corporations as described in IC 8-1-13-23.**

(b) As used in this section, "control" means the power to direct the management and policies of a public utility, utility company, or holding company through:

- (1) ownership of voting securities or stock;**
- (2) the terms of a contract; or**
- (3) other means.**

The term does not include power to direct management and policies derived from holding an official position or corporate office with the public utility, utility company, or holding company. A person that owns, controls, or has the power to vote or the power to vote proxies that constitute at least twenty percent (20%) of the total vote power of a public utility, utility company, or holding company is presumed to have control of the public utility, utility company, or holding company.

(c) As used in this section, "holding company" means a company that has control over at least one (1) of the following:

- (1) A public utility.**
- (2) A utility company.**

(d) As used in this section, "person" means:

- (1) an individual;**
- (2) a firm;**
- (3) a corporation;**
- (4) a company;**
- (5) a partnership;**
- (6) a limited liability company;**
- (7) an association;**
- (8) a trustee;**
- (9) a lessee; or**
- (10) a receiver.**

(e) As used in this section, "reorganization" means a transaction

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that results in:

- (1) a change in the ownership of a majority of the voting capital stock of a public utility;
- (2) a change in the ownership or control of an entity that owns or controls a majority of the voting capital stock of a public utility;
- (3) the merger of two (2) or more public utilities; or
- (4) the acquisition by a public utility of substantially all the assets of another public utility.

(f) As used in this section, "utility company" means every corporation, company, partnership, limited liability company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment for the:

- (1) conveyance of telegraph or telephone messages;
- (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that acquires, owns, or operates any of the foregoing facilities.

(g) A public utility ~~as defined in section 1 of this chapter, shall~~ may not do any of the following without approval of the commission after a hearing:

- (1) Sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~
- (2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing.~~
~~And no such~~
- (3) Contract for or effect a reorganization of the public utility.
- (4) Acquire control of a public utility, utility company, or holding company.

(h) A person may not acquire control of a public utility or a holding company of a public utility without approval of the commission after a hearing.

(i) A holding company that controls one (1) or more public utilities may not acquire control of a utility company without approval of the commission after a hearing.

(j) A public utility, except temporarily or in case of emergency and

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for a period of not exceeding thirty (30) days, ~~shall~~ **may not** make any special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility, without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

(b) (k) The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the commission.

(l) **The commission shall issue an order not later than one hundred thirty-five (135) days after a petition seeking approval is filed under this section. If the commission fails to issue an order within one hundred thirty-five (135) days after the petition is filed, the petition is considered approved.**

(c) (m) Nothing contained in this section shall prevent the holding of stock lawfully acquired before May 1, 1913, or prohibit, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

(d) (n) Every contract by any public utility for the purchase, acquisition, assignment, or transfer to it of any of the stock of any other public utility by or through any person, partnership, limited liability company, or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract shall be effective for any purpose.

SECTION 5. IC 8-1-2-115.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 115.5. (a) As used in this section, "account" refers to the commission public utility fund account established under**

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IC 8-1-6.

(b) As used in this section, "order" means:

- (1) a decision;
- (2) a decree;
- (3) a demand;
- (4) a determination;
- (5) a direction;
- (6) an order;
- (7) a requirement; or
- (8) a rule;

of the commission.

(c) As used in this section, "utility" means:

- (1) a public utility over which the commission has jurisdiction; or
- (2) the department of public utilities created under IC 8-1-11.1.

(d) The commission may issue an order under subsection (e) only if it finds, after notice and hearing, that a utility has:

- (1) violated a provision of this title;
- (2) failed to comply with an order; or
- (3) failed to comply with an administrative rule adopted by the commission under this title.

(e) After making a finding under subsection (d), the commission may issue an order that does one (1) or more of the following:

- (1) Imposes on a utility, other than a telephone company (as defined in section 88 of this chapter) that provides local exchange telephone service, a civil penalty of:
 - (A) five thousand dollars (\$5,000) for an initial violation or noncompliance found under subsection (d); or
 - (B) fifteen thousand dollars (\$15,000) for a second or subsequent violation or noncompliance found under subsection (d).

For purposes of this subdivision, each day that a violation or noncompliance occurs is a separate violation or noncompliance.

- (2) Orders a utility to cease and desist from a violation or noncompliance found under subsection (d).
- (3) Mandates corrective action by a utility to alleviate a violation or noncompliance found under subsection (d).
- (4) Revokes or modifies the terms of a utility's:
 - (A) certificate of territorial authority;
 - (B) certificate of public convenience and necessity; or



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(C) other permit issued by the commission.

(f) The commission shall consider the following when determining the amount of a civil penalty:

- (1) The size of the utility.
- (2) The gravity of the violation or noncompliance found under subsection (d).
- (3) The good faith of the utility in remedying the violation or achieving compliance after receiving notice of a violation or noncompliance under subsection (d).

(g) This section does not apply to a violation or noncompliance found under subsection (d) that was the result of the following:

- (1) Customer provided equipment.
- (2) The negligent act of a customer.
- (3) An emergency situation.
- (4) An unavoidable casualty.
- (5) An act of God.

(h) The attorney general shall bring an action to enforce an order of the commission under subsection (e). If the attorney general prevails in an action under this subsection, the attorney general may recover reasonable attorney's fees and court costs.

(i) Civil penalties under this section are cumulative. A suit for recovery of a civil penalty does not affect:

- (1) the recovery of another civil penalty or forfeiture for a separate violation or noncompliance; or
- (2) a criminal prosecution against:
 - (A) a public utility;
 - (B) an agent, a director, an employee, or an officer of a public utility; or
 - (C) any other person.

(j) The secretary of the commission shall direct that a civil penalty collected under this section be distributed as follows:

- (1) A penalty assessed for a violation that directly affects ratepayers must be refunded directly to the customers of the violating utility in the form of a credit on customer bills.
- (2) A penalty assessed for a violation that directly harms another utility must be awarded directly to the other utility.
- (3) A penalty assessed for a violation that does not directly affect ratepayers or harm another utility must be deposited into the account.

(k) The commission shall use penalties deposited into the account for:

- (1) consumer education;



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- (2) promotion of utility competition; or
- (3) any other purpose considered by the commission to further the public interest.

The commission shall report to the regulatory flexibility committee the distribution of deposits under this section.

- (l) Penalties deposited into the account may not be included in:
 - (1) the calculation of the difference between actual expenditures and appropriations described in IC 8-1-6-1(b); or
 - (2) any public utility fee credit.

SECTION 6. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 128. (a) As used in this section, "utility" means:

- (1) a public utility over which the commission has jurisdiction; or
- (2) the department of public utilities created under IC 8-1-11.1.

(b) If the commission:

- (1) determines that the provision of utility service is necessary to:
 - (A) prevent injury to a person; or
 - (B) alleviate an emergency; and
- (2) directs a utility to provide utility service;

the utility shall provide utility service within twenty-four (24) hours after receiving direction from the commission.

SECTION 7. IC 8-1-2-129 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 129. The commission may require a public utility to post a reasonable performance bond as a condition of the public utility's operation in Indiana. The amount of the reasonable performance bond may not exceed two million dollars (\$2,000,000).

SECTION 8. IC 8-1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) All fees herein prescribed shall be paid into the treasury of the state of Indiana through the secretary of the commission and quietused into an account to be known as the commission public utility fund account. This account shall be used for enforcing the provisions of IC 8-1-1 and IC 8-1-2 and shall be utilized only for the purpose of funding the expenses of the commission and the consumer counselor in amounts not in excess of their respective appropriations by the general assembly, plus the contingency fund. All appropriations under this chapter paid out of the commission public utility fund account shall be subject to the prior approval of the



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general assembly, the governor, and the state budget agency.

(b) **The secretary of the commission shall deposit into the account the following:**

(1) Fees collected from municipalities under IC 8-1-2-85. ~~shall also be deposited in the commission public utility fund account, as if they were fees collected from public utilities under this chapter.~~

(2) **Civil penalties collected under IC 8-1-2-115.5.**

SECTION 9. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.4. Merchant Power Plants

Sec. 1. This chapter does not apply to a merchant power plant that has filed a petition with the commission under IC 8-1-2.5 before March 1, 2001, seeking an order that the commission decline to exercise, in whole or in part, its jurisdiction over the merchant power plant.

Sec. 2. (a) As used in this chapter, "merchant power plant" means a facility within Indiana used for the:

(1) production, transmission, delivery, or furnishing of heat, light, or power; and

(2) sale of electric energy exclusively on the wholesale market; to other public utilities, energy service providers, or power marketers within or outside Indiana.

(b) The term includes a facility that has made a significant alteration to the labor used to construct or remodel the facility. For purposes of this subsection, a facility makes a significant alteration in the labor used to construct or remodel a facility if the person uses contractors, subcontractors, or work crews that include workers who are not participants in or have not completed a jointly administered labor and management apprenticeship program approved by the United States Department of Labor's Bureau of Apprenticeship Training.

(c) The term does not include a facility that is owned, controlled, or operated by a person that is obligated contractually to provide substantially all of the wholesale power requirements of an electricity supplier under a contract extending at least five (5) years.

Sec. 3. Except as provided in section 1 of this chapter, a merchant power plant is subject to the jurisdiction of the commission.

Sec. 4. (a) The commission shall consider the following when



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acting upon any petition by a merchant power plant under IC 8-1-2.5 or IC 8-1-8.5:

- (1) Location.
- (2) Need.
- (3) Financing.
- (4) Reporting requirements.
- (5) Impact on electric, water, and natural gas suppliers and customers.
- (6) The recommendation of the department of natural resources under section 12 of this chapter.

(b) The commission shall issue a decision either approving or denying a merchant power plant's petition under IC 8-1-2.5 or IC 8-1-8.5 not later than eighteen (18) months after the date of the petition.

Sec. 5. (a) When petitioning the commission under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant must establish proof of financial responsibility by filing one (1) or a combination of the following with the commission:

- (1) A fully funded trust fund agreement.
- (2) A surety bond with a standby trust fund agreement.
- (3) A letter of credit with a standby trust fund agreement.
- (4) An insurance policy with a standby trust fund agreement.
- (5) Proof that the merchant power plant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).

(b) The amount of financial responsibility that a merchant power plant must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient to close the merchant power plant in a manner that:

- (1) minimizes the need for further maintenance and remediation; and
- (2) provides reasonable, foreseeable, and necessary maintenance and remediation after closure for at least twenty (20) years after the merchant power plant ceases operations.

(c) The commission may use:

- (1) a trust fund agreement;
- (2) a surety bond;
- (3) a letter of credit;
- (4) an insurance policy; or
- (5) other proof of financial responsibility;

filed under this section for the closure or post-closure monitoring, maintenance, or remediation of a merchant power plant approved

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by the commission, if the merchant power plant does not comply with closure or post-closure standards established by the commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish the following:

(1) Standards for the proper closure and post-closure monitoring, maintenance, and remediation of merchant power plants.

(2) Criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of financial responsibility provided by a merchant power plant may be released to the merchant power plant when the merchant power plant meets the closure and post-closure standards established under subdivision (1).

Sec. 6. (a) Not later than seven (7) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:

(1) send notice of the petition by United States mail to all record owners of real property located within one-half (1/2) mile of the proposed facility; and

(2) cause notice of the petition to be published in a newspaper of general circulation in each county in which the facility or proposed facility is or will be located.

(b) The notice of the petition shall include:

(1) a description of the facility or proposed facility; and

(2) the location, date, and time of the field hearing required by section 7 of this chapter.

Sec. 7. Not later than thirty (30) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall conduct a field hearing at a location in a county in which the facility or proposed facility is or will be located. The purpose of the field hearing is to determine local support for the merchant power plant.

Sec. 8. Not later than thirty (30) days after the field hearing required by section 7 of this chapter, a majority of the persons described in section 6(a)(1) of this chapter may request in writing a hearing before the commission.

Sec. 9. (a) Not later than thirty (30) days after a hearing is requested under section 8 of this chapter, the commission shall conduct a hearing at a location in a county in which the facility or proposed facility is or will be located. The hearing required by this subsection must be held:

(1) before or at the same time as the hearing required under

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IC 8-1-8.5-5(b); and

(2) before the commission issues a certificate of public convenience and necessity under IC 8-1-8.5.

(b) At least ten (10) days before the scheduled hearing, notice of the hearing must be served by first class mail on:

(1) all record owners of property located within one-half (1/2) mile of the proposed facility; and

(2) the merchant power plant.

(c) The parties to the hearing include:

(1) a person entitled to notice under section 9(b)(1) of this chapter; and

(2) the merchant power plant.

(d) The commission shall accept written or oral testimony from any person who appears at the public hearing, but the right to call and examine witnesses is reserved for the parties to the hearing.

(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

Sec. 10. Not later than forty-five (45) days after a hearing is conducted under section 9 of this chapter, the commission shall issue written findings based on the testimony presented at the hearing. To the extent the commission's findings differ from testimony presented at the hearing, the commission must explain its findings.

Sec. 11. When considering whether to approve a merchant power plant, the commission shall give preference to the following locations for siting:

(1) Brownfield sites that are isolated from populated areas.

(2) Sites of existing or former utilities that can be replaced or repowered.

(3) Other sites identified for power plant or heavy industrial development in local land use plans before the initiation of site selection for the facility.

Sec. 12. (a) For purposes of this section:

(1) "department" refers to the department of natural resources; and

(2) "water resource" has the meaning set forth in IC 14-25-7-8.

(b) When considering whether to approve a merchant power plant, the commission shall obtain a recommendation from the department regarding the merchant power plant's planned use of and its potential effect on the water resource.

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(c) To make its recommendation, the department may do the following:

- (1) Rely on the merchant power plant's water resource assessment under subsection (d).
- (2) Consult with and advise users of the water resource.
- (3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.
- (4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.
- (5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.
- (6) Engage in any other activity necessary to carry out the purposes of this section.

(d) A merchant power plant shall provide an assessment of its effect on the water resource and its users to the commission and the department. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1. The assessment must include the following information:

- (1) Sources of water supply.
- (2) Total amount of water to be used by the merchant power plant for each source.
- (3) Location of wells or points of withdrawal.
- (4) Ability of the water resource to meet the needs of the merchant power plant and other users.
- (5) Probable effects of the merchant power plant's use and consumption of the water resource on other users.
- (6) Alternative sources of water supply.
- (7) Conservation measures proposed by the merchant power plant for reducing the plant's effect on the water resource.
- (8) Other information required by any other law, rule, or regulation.

Sec. 13. Following the approval of a petition by the commission, the merchant power plant shall:

- (1) notify the commission upon becoming an affiliate of any regulated Indiana utility selling electricity at retail to Indiana consumers, at which time the commission may reassert any jurisdiction it had declined under IC 8-1-2.5;
- (2) obtain prior commission approval with respect to the sale of any electricity to any affiliated regulated Indiana retail



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utility or any affiliate of a regulated Indiana retail utility; and
**(3) obtain prior commission approval of any transfers of
ownership of the facility or its assets."**

Page 10, between lines 6 and 7, begin a new paragraph and insert:
"SECTION 5. IC 8-1-2-115 IS REPEALED [EFFECTIVE JULY 1,
2002]."

Renumber all SECTIONS consecutively.

(Reference is to ESB 29 as printed February 22, 2002.)

PELATH

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 29 be amended to read as follows:

Page 4, between lines 36 and 37, begin a new paragraph and insert:
"SECTION 4. IC-8-1-8.4 IS ADDED TO THE INDIANA CODE AS
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
PASSAGE]:

Chapter 8.4. Merchant Power Plant Certification and Siting

Sec. 1. As used in this chapter, "brownfield" has the meaning set forth in IC 13-11-2-19.3.

Sec. 2. (a) As used in this chapter, "merchant power plant" means an electric generating facility all or a designated part of which is used for the production and sale of electric energy exclusively into the wholesale power market or to other utilities, energy service providers, or power marketers within or outside Indiana. However, for purposes of sections 2 through 18 of this chapter, the term does not include a plant all or a designated part of which, before becoming a plant or a designated part of a plant used for the production and sale of electric energy exclusively into the wholesale power market, was used to produce electric energy for sale to retail Indiana customers.

(b) The term does not include plants owned by any of the following:

- (1) A corporation organized and operating under IC 8-1-13.**
- (2) A nonprofit Indiana corporation most of whose members are organized and operating under IC 8-1-13.**
- (3) A joint agency created and operating under IC 8-1-2.2.**
- (4) A municipally owned utility.**

Sec. 3. As used in this chapter, "need" means a commission



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finding supported by substantial evidence that:

- (1) the regional power market has a projected need:
 - (A) for the type of capacity being proposed at or near the time the proposed merchant power plant is expected to become commercially operational; and
 - (B) that will not be met by other supply or demand side resources reasonably expected to be available at or near the time described in clause (A); and
- (2) the merchant power plant being proposed is likely to be dispatched with sufficient frequency in the wholesale regional power market over the period of its expected operating life to recover its revenue requirement.

Sec. 4. As used in this chapter, "person" means any corporation, company, partnership, limited liability company, individual, association of individuals, or their lessees, trustees, or receivers appointed by a court.

Sec. 5. As used in this chapter, "petitioner" means a person that files with the commission a petition under this chapter to site a merchant power plant.

Sec. 6. Any person that owns, operates, manages, or controls a merchant power plant in Indiana is a public utility (as defined in IC 8-1-2-1(a)).

Sec. 7. (a) A person may not begin to construct a merchant power plant by significantly altering a site to install permanent equipment or structures unless the person files a petition with and obtains approval from the commission under this chapter.

(b) The commission shall issue a decision approving or denying a petition under the chapter not earlier than two hundred seventy (270) days after the filing of the petition.

(c) A person filing a petition under this chapter shall publish a notice of the filing in a newspaper of general circulation published in the county in which the proposed merchant power plant is to be located.

Sec. 8. (a) The commission may approve the siting of a merchant power plant if the commission determines that the siting of the merchant power plant is not adverse to the interests of the:

- (1) citizens of Indiana; and
- (2) citizens of the locality where the merchant power plant is proposed to be sited.

Sec. 9. The commission shall consider the following when acting upon a petition by a petitioner under this chapter:

- (1) The need for the merchant power plant.



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- (2) The location of the merchant power plant.
- (3) The ownership or transfer of ownership of the merchant power plant.
- (4) The management of the merchant power plant.
- (5) The financing of the merchant power plant.
- (6) The capacity of the merchant power plant.
- (7) The type and size of the merchant power plant.
- (8) The type of fuel used by the merchant power plant.
- (9) The merchant power plant's fuel supply arrangements and its effect on the reliability of Indiana's electrical system and the price and availability of the fuel for other uses in Indiana, taking into account the effects of other merchant power plants.
- (10) The merchant power plant's electric supply contracts.
- (11) The merchant power plant's effect on the electric and gas transmission systems serving Indiana.
- (12) The merchant power plant's effect on:
 - (A) water supplies and usage, taking into account the effects of other merchant power plants using the same or interconnected sources of water; and
 - (B) current users of the sources of water.
- (13) Local ordinances and area plans.
- (14) Oral and written testimony received by the commission under section 13 of this chapter.
- (15) The results of the study required under section 21 of this chapter.
- (16) Other factors that the commission considers relevant in making a determination required under this chapter.

Sec. 10. The petitioner must provide documentation to the commission that it has thoroughly considered the feasibility and economics of the following types of sites:

- (1) Brownfield sites that are isolated from populated areas.
- (2) Sites of existing or former utilities that can be replaced or repowered.
- (3) Other sites identified for power plant and heavy industrial development in local land use plans before the initiation of site selection for the merchant power plant.

Sec. 11. (a) As used in this section:

- (1) "department" refers to the department of natural resources; and
- (2) "water resource" has the meaning set forth in IC 14-25-7-8.



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(b) When considering whether to approve a merchant power plant, the commission shall obtain a recommendation from the department regarding the merchant power plant's planned use of and its potential effect on the water resource.

(c) In making its recommendation, the department may do the following:

- (1) Rely on the merchant power plant's water resource assessment under subsection (d).
- (2) Consult with and advise users of the water resource.
- (3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.
- (4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.
- (5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.
- (6) Engage in any other activity necessary to carry out the purposes of this section.

(d) A petitioner shall provide to the commission and the department an assessment of the proposed merchant power plant's effect on the water resource and its users. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1. The assessment must include the following information:

- (1) Sources of water supply.
- (2) Total amount of water to be used by the merchant power plant for each source.
- (3) Location of wells or points of withdrawal.
- (4) Ability of the water resource to meet the needs of the merchant power plant and other users.
- (5) Ability of the water resource to meet the future needs of the county in which the proposed merchant power plant is to be located.
- (6) Alternative sources of water supply.
- (7) Conservation measures proposed by the petitioner for reducing the merchant power plant's effect on the water resource.

Sec. 12. (a) If a person files a petition with the commission under this chapter or any other law for the siting of a merchant power plant, the person must establish proof of financial responsibility by filing one (1) or a combination of the following with the

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commission at a time, either before or after commission approval of the petition, that shall be determined by the commission:

- (1) A fully funded trust fund agreement.
- (2) A surety bond with a standby trust fund agreement.
- (3) A letter of credit with a standby trust fund agreement.
- (4) An insurance policy with a standby trust fund agreement.
- (5) Proof that the merchant power plant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).

(b) The amount of financial responsibility that a person must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient, but not more than reasonably necessary, to:

- (1) fully decommission the site and remove structures, equipment, and site hazards;
- (2) minimize the need for further maintenance and remediation; and
- (3) provide for reasonable, foreseeable, and necessary maintenance and remediation after closure of the merchant power plant for at least twenty (20) years;

after the merchant power plant ceases operations.

(c) The commission may use:

- (1) a trust fund agreement;
- (2) a surety bond;
- (3) a letter of credit;
- (4) an insurance policy; or
- (5) other proof of financial responsibility;

filed under this section for the closure and post closure monitoring, maintenance, or remediation of a merchant power plant approved by the commission if the merchant power plant does not comply with closure or post closure standards established by the commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of financial responsibility provided by a merchant power plant meets the standards to decommission the merchant power plant under subsection (b)(1).

Sec. 13. (a) Not later than thirty (30) days after the petitioner has prefiled its testimony before the commission for the siting of a merchant power plant under this chapter, the commission shall conduct a hearing at a location in the county in which the merchant

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power plant is proposed.

(b) The commission shall send notice of the hearing by first class mail at least ten (10) days before the hearing to the following:

(1) Relevant state regulatory agencies, as determined by the commission.

(2) Zoning and area plan authorities for the:

(A) county; and

(B) municipality, if any;

where the merchant power plant is proposed.

(3) Record owners of real property located within one-half (1/2) mile of the proposed site for the merchant power plant. However, at the commission's discretion, the commission may require notification to record owners of real property located within not more than two (2) miles of the proposed site in sparsely populated areas.

(c) The commission shall cause notice of the hearing to be published in a newspaper of general circulation in each county in which the merchant power plant is proposed. The publication required under this subsection must occur once a week for two (2) weeks, with the second publication occurring at least fifteen (15) days before the date of the hearing.

(d) The commission shall accept written and oral testimony from any person who appears at the public hearing.

(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

Sec. 14. Following the approval of a petition by the commission, the merchant power plant shall submit the following to the commission:

(1) At least one (1) week before commencement of construction activities, a startup report that includes the:

(A) status of necessary permits; and

(B) expected in service date.

(2) A midpoint report, to be submitted at a time determined by the commission, that includes information concerning the:

(A) status of construction; and

(B) expected in service date.

(3) A testing notice at least two (2) weeks before any testing of the merchant power plant.

(4) At the time of the initial commercial operation of the merchant power plant, an in service notice that includes the following:

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- (A) Contracts for firm utility sales and contracts for firm sales to Indiana utilities.
- (B) A summary of fuel contracts, including any pipelines involved in the transactions.
- (C) Contingency plans, if any, detailing response plans to emergency conditions as required by state or local units of government, transmission owners, or any regional transmission grid operator.
- (D) Certified dependable capacity rating.
- (5) Not later than thirteen (13) months after the in service date, a first year report that includes the following:
 - (A) Summer and winter dependable capacity ratings.
 - (B) The annual capacity factor, including the summer and winter seasonal capacity factor.
 - (C) The hours of operation for each season.
 - (D) Total annual, peak day, and summer seasonal water usage and discharge.
 - (E) An itemization of transmission load restrictions or other operational restrictions incurred during the year.
 - (F) The number of employees employed by the merchant power plant.
- (6) Other information requested by the commission.

Sec. 15. Following approval of a petition for the siting of a merchant power plant by the commission, the petitioner must:

- (1) notify the commission upon becoming an affiliate of any regulated Indiana utility selling electricity at retail to Indiana consumers;
- (2) obtain prior commission approval for the sale of electricity to any affiliate that is a regulated Indiana retail utility, except for electricity purchased on the wholesale spot market;
- (3) obtain prior commission approval of any transfers of ownership of the merchant power plant or its assets;
- (4) obtain commission approval before altering the capacity or significantly altering the size of the merchant power plant; and
- (5) obtain commission approval before altering the type of fuel used.

Sec. 16. After notice and hearing, the commission may withdraw its approval for the siting of a merchant power plant if the petitioner or subsequent owner or operator:

- (1) fails to commence construction of the merchant power plant within two (2) years of the date of the commission's



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order of approval and is no longer diligently pursuing the commencement of construction of the merchant power plant;
or

(2) fails to complete construction of the merchant power plant within five (5) years of the date of the commission's order of approval.

Sec. 17. (a) A person that receives commission approval of the siting of a merchant power plant under this chapter or any other law, or the subsequent owner or operator of the merchant power plant for which siting approval is given, must operate the merchant power plant in accordance with the commission's order of approval.

(b) If the commission finds that the merchant power plant is not operating in accordance with the commission's approval, the commission may:

- (1) order an investigation; and
- (2) revoke the approval after the investigation, a hearing, and the conclusion of the appeals process.

Sec. 18. (a) Notwithstanding IC 8-1-2.5-5, the commission may not decline to exercise its jurisdiction under this chapter with respect to a merchant power plant. However, the commission may adopt rules under IC 4-22-2 to establish procedures for the exercise of its jurisdiction under this chapter that differ according to the type, size, or fuel resource of the merchant power plant.

(b) Whenever the commission substantially declines its jurisdiction under IC 8-1-2.5 with respect to a merchant power plant and its developer, the developer may not exercise the powers conferred under IC 4-20.5-7-10.5, IC 5-11-10-1(c)(1), IC 6-1.1-8-1 or IC 8-1-8-1, or any other rights, privileges, or immunities conferred by law on electric utilities assigned service areas under IC 8-1-2.3 on account of the obligation of electric utilities to serve the general public without undue discrimination at regulated rates and charges.

(c) Except as provided by federal law, the commission has sole and exclusive jurisdiction over the siting and location of utility facilities, including merchant power plants.

Sec. 19. Information pertaining to:

- (1) fuel arrangements or contracts; or
- (2) electric sales and contracts;

of merchant power plants that are approved by the commission under this chapter or any other law is not a public record under IC 5-14-3.



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Sec. 20. The commission shall direct the state utility forecasting group established under IC 8-1-8.5-3.5 to conduct an annual regional power market study to assess:

- (1) the need for merchant power plant additions in the region;**
- (2) the effect of merchant power plants on the price of fuels used by merchant power plants;**
- (3) the effect of merchant power plants on the price of electricity;**
- (4) the effect of merchant power plant construction and operation on the deployment of demand side resources regionally and in Indiana;**
- (5) the amount of merchant power plant capacity contracted to Indiana electric utilities;**
- (6) the amount of merchant power plant capacity contracted to out of state marketers and electric utilities; and**
- (7) other issues the commission considers relevant."**

Page 10, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 6. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission established under IC 8-1-1-2.

(b) Except as provided in subsection (c), a petitioner that files for commission approval of the siting of a merchant power plant before the effective date of this act is not subject to IC 8-1-8.4, as added by this act.

(c) A petitioner that files for commission approval of the siting of a merchant power plant before the effective date of this act is subject to:

- (1) IC 8-1-8.4-6;**
- (2) IC 8-1-8.4-12;**
- (3) IC 8-1-8.4-15;**
- (4) IC 8-1-8.4-17;**
- (5) IC 8-1-8.4-18(b); and**
- (6) IC 8-1-8.4-19;**

all as added by this act. If a petitioner has filed for commission approval of the siting of a merchant power plant and the commission has not issued an order approving or denying the petition before the effective date of this act, the petitioner is also subject to IC 8-1-8.4-16, as added by this act."

Renumber all SECTIONS consecutively.

(Reference is to ESB 29 as printed February 22, 2002.)

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